



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/154072

PRELIMINARY RECITALS

Pursuant to a petition filed December 09, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on March 13, 2014, at Racine, Wisconsin.

The issue for determination is whether Petitioner was overissued BadgerCare+ benefits because the mother of his children was living in the home, that was not reported and her income was not being counted for BadgerCare+ eligibility and premium calculation purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent multiple notices of BadgerCare+/Medicaid overpayment, one dated November 4, 2013 and the others dated October 25, 2013, that collectively informed him that he had been overpaid

BadgerCare+/Medicaid benefits in the amount of \$8048.67 during certain periods beginning October 1, 2008 and ending September 30, 2013.

3. The overissuance alleged here is comprised of the amount the State paid to an HMO for coverage (a/k/a the capitation rate), fee for service Medicaid payments and premiums which would have been assessed had household composition and income been correctly reported. Petitioner timely appealed.
4. The reason for the alleged overissuance was that Petitioner failed to report the mother (■) of his children was living in the home. Her income was not counted for BadgerCare+ eligibility and premium determination purposes. The children in common were born in 2005 and 2007.
5. The agency based its decision that ■ was in the home of Petitioner on the following:
 - CCAP records from 2008, 2010, 2012 and 2013 that have the same address for Petitioner and ■
 - A 2011 voluntary acknowledgement of paternity showing the same address for Petitioner and ■
 - A 2012-2013 school year emergency contact form indicating the same address for Petitioner and ■
 - Employment verification for Petitioner and ■ showing the same address.
 - A 2010 update of ■'s driver's license that shows the same address as that of Petitioner.
 - A 8/25/12 Racine County Jail booking record that shows ■'s address to be the same as Petitioner's.
 - A 9/15/12 Racine Police Dep't report that has Petitioner and ■ at the same address.
 - A 6/17/13 Racine County Sheriff's Dep't. report that has ■'s address and is the same as Petitioner's
 - A 7/23/13 Racine County Sheriff's Dep't. report that has ■'s address and is the same as Petitioner's.
 - A 9/24/13 Sturtevant Police Dep't report that shows ■'s address to be the same as Petitioner's.
 - Testimony from three landlords of three different addresses during the time periods involved here that demonstrated that both Petitioner and ■ were in the same residence. One lease signed by Petitioner and ■ on 4/2/10 shows them at the same address.
6. ■'s income was not an issue at the hearing nor was the calculation of the amount of the overpayment.
7. The record was held open to give Petitioner an opportunity to submit evince refuting the agency evidence. Nothing was received.

DISCUSSION

Medicaid overpayment recovery is authorized by *Wis. Stat., §49.497(1)*:

- (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Also see BadgerCare+ Eligibility Handbook (BEH), §28.2.

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The BadgerCare+ eligibility and premium calculations begin with a determination of who is included in the BadgerCare+ test group. The test group is the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. *BadgerCare+ Eligibility Handbook, §2.2.*

Inclusion in the test group is determined by qualifying relationships and legal responsibility:

The BC+ Test Group includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.

BadgerCare+ Eligibility Handbook, §2.2.

The BadgerCare+ Test Group for a primary person who is residing with his or her own child must include a child under age 19 of the primary person and the co-parent of a primary person's child. *Id.* §2.2.1. Thus these rules make clear that Petitioner, his children and the co-parent, are included in the same group for BadgerCare+ purposes if residing in the same house and that the income of the co-parent must be counted.

The overpayment alleged here occurred as Petitioner failed to report household composition and income.

I note that the income limit for adult BadgerCare+ eligibility is 200% of the Federal Poverty Level (FPL) has ranged from \$3533 to \$3925 for a group of 4 over the time involved here. *See BEH, §§16.1 and Operations Memo #s 08-08 and 13-04, issued 02/07/08 and 02/27/13, respectively.* The earned income of all eligible individuals in the household over age 18 is counted. *BEH, §16.4.* Children under age 19 are typically BadgerCare+ eligible but where income is over 200% of the FPL, a premium is due for the children in the group. *BEH, §19.1.* Agency records show income above these limits. Exhibit Z.

The question is whether ■ was in the household. This case had a companion case for a FoodShare overpayment. *DHA Case # FOP- 154073.* The following is taken from the Discussion portion of that decision and is as relevant and determinative here as in the FoodShare case:

The documentary record provided by the agency is laid out in the Findings at # 4 and does establish a strong case for the proposition that Petitioner and ■ were residing together. Petitioner could offer nothing other than the claim that they had not lived together since their children were born (in 2005 and 2007). I find it hard to believe that Petitioner could not provide some trace of evidence beyond his own testimony to show that the mother of their children lived anywhere but with Petitioner over the years involved here. Indeed, they have represented themselves as living together for many, if not all, purposes except for receipt of public benefits.

The preponderance of the evidence – the documentary record coupled with the credible testimony of the investigator and the landlords - demonstrates that Petitioner and ■ were residing together as alleged.

DHA case #FOP-154073, issued April 2, 2014 at page 3.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid BadgerCare+ benefits in the amount of \$8048.67.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

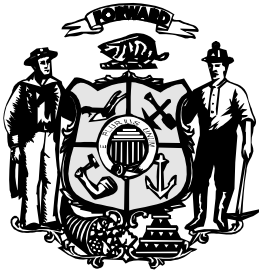
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2014.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability